ARKANSAS SUPREME COURT

No. 06-391

NOT DESIGNATED FOR PUBLICATION

PAUL PENNEBAKER
Appellant

v.

LARRY NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION
Appellee

Opinion Delivered June 22, 2006

PRO SE MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF [CIRCUIT COURT OF LINCOLN COUNTY, LCV 2006-3-5, HON. ROBERT H. WYATT, JR., JUDGE]

APPEAL DISMISSED; MOTION MOOT

PER CURIAM

In 2002, appellant Paul Pennebaker was found guilty by a jury of manufacturing a controlled substance and possession of a controlled substance. An aggregate sentence of 240 months' imprisonment was imposed. The sentence was enhanced pursuant to Ark. Code Ann. §5-64-418 (Supp. 2003) because minors were present during the manufacture of methamphetamine. The Arkansas Court of Appeals affirmed. *Pennebaker v. State*, CACR 02-1224 (Ark. App. April 7, 2004).

Subsequently, appellant timely filed in the trial court a *pro se* petition pursuant to Criminal Procedure Rule 37.1 seeking to vacate the judgment. The petition was denied, and this court affirmed the order. *Pennebaker v. State*, CR 04-843 (Ark. October 6, 2005) (*per curiam*).

In 2006, appellant filed in the circuit court in the county in which he was incarcerated a *pro se* petition for writ of *habeas corpus*. The petition was denied, and the record has been lodged here on appeal. Appellant now seeks an extension of time to file his brief.

We need not consider the motion as it is apparent that appellant could not prevail in this appeal if it were permitted to go forward because he failed to demonstrate a ground for the writ. Accordingly, the appeal is dismissed. The motion is moot.

This court has consistently held that an appeal of the denial of postconviction relief, including an appeal from an order that denied a petition for writ of *habeas corpus*, will not be permitted to go forward where it is clear that the appellant could not prevail. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (*per curiam*); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (*per curiam*).

Unless a petitioner can show that the trial court lacked jurisdiction or that the commitment was invalid on its face, there is no basis for a finding that a writ of *habeas corpus* should issue. *Birchett v. State*, 303 Ark. 220, 795 S.W.2d 53 (1990) (*per curiam*). The petitioner must plead either the facial invalidity or the lack of jurisdiction and make a "showing, by affidavit or other evidence, [of] probable cause to believe" he is illegally detained. Ark. Code Ann. 16-112-103 (1987); *see Wallace v. Willock*, 301 Ark. 69, 781 S.W.2d 478 (1989), *see also Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991).

Appellant asserted in the *habeas* petition that: (1) the evidence adduced at trial was not sufficient to establish that minor children were present in the immediate area where methamphetamine was manufactured; (2) the trial court erred by not giving a particular jury instruction; (3) the trial court erred in allowing certain evidence to be introduced at trial; (4) the evidence was insufficient to sustain the judgment of conviction. None of the claims was sufficient to establish that the commitment was invalid on its face or that the trial court was without jurisdiction. Clearly, appellant failed to meet his burden of showing by affidavit or other evidence of probable cause to believe that he was illegally detained.

Appeal dismissed; motion moot.